STATE OF MICHIGAN

COURT OF APPEALS

PEOPLE OF THE STATE OF MICHIGAN, Plaintiff-Appellee,	UNPUBLISHED October 14, 2004
v	No. 241247 Monroe Circuit Court
MOSES RODRIGUEZ, Defendant-Appellant.	LC No. 00-030767-FH

Before: Kelly, P.J., and Gage and Zahra, JJ.

PER CURIAM.

Defendant appeals by leave granted his plea of no contest to possession with intent to deliver over forty-five kilograms of marijuana, MCL 333.7401(2)(d)(i). Defendant was sentenced to two to fifteen years' imprisonment. We affirm.

A multi-jurisdictional FBI task force known as CHIEF (Combined Hotel Interdiction Enforcement) received a tip from a confidential informant, who stated that two persons were in the downriver area and possibly involved in narcotics trafficking. The police then discovered that defendant and Sammy Olivas had checked into a Taylor hotel and paid cash in advance for a week's stay. The police obtained their criminal histories, conducted intelligence checks, and learned that defendant and Olivas have extensive criminal histories for trafficking marijuana, cocaine, and heroin, extending as far back as the 1960s. Defendant and Olivas were visiting from California, which is a "source state."[1] The police surveilled defendant and Olivas for two weeks, during which defendant and Olivas paid cash in advance for a second week's stay at the hotel.

Defendant and Olivas checked out of the hotel on July 18, 2000 and placed their luggage into a van. After failing to stop while exiting a parking lot in Taylor, defendant pulled into traffic in front of the police. The officers conducted a traffic stop for failure to yield the right of way. When asked why he was in Michigan, defendant explained that he was working as a private investigator for an attorney, but could not or would not identify the attorney. Olivas, who was seated in the front passenger seat, stated that he was vacationing and sightseeing. The

[1] A "source state" is a state within the United States that has proven to be a point of origin for narcotics.

vehicle they were driving was registered to a private third party. Although a canine made a positive indication for the odor of narcotics in and around the vehicle, the canine officer's search of the vehicle yielded no narcotics.

After the traffic stop, defendant and Olivas drove to a house in Romulus that had previously been investigated for narcotics activity. The residence belonged to a known narcotics trafficker. They parked the vehicle in a garage, where it remained overnight. Throughout the course of the two-week surveillance, defendants exhibited "surveillance conscious" driving, which includes taking indirect routes to destinations, parking on side streets, and watching approaching vehicles.

On July 19, 2000, defendant and Olivas were traveling southbound on I-75 when the police conducted an investigatory stop of the vehicle in Monroe. There were no traffic violations. Olivas was driving, and neither he nor defendant gave permission for the vehicle to be searched. After a canine made a positive identification for the odor of narcotics, the police searched the vehicle and seized two large, black duffel bags, which were later determined to contain more than forty-five kilograms of marijuana.

On appeal, defendant claims that the trial court erred in denying his motion to suppress the evidence seized during an illegal investigatory stop. We review a trial court's findings of fact following a suppression hearing for clear error. *People v LoCicero (After Remand)*, 453 Mich 496, 500; 556 NW2d 498 (1996). Reversal is only warranted if, upon review of the record, we have a "definite and firm conviction that the trial court made a mistake." *People v Burrell*, 417 Mich 439, 449; 339 NW2d 403 (1983). We review de novo a trial court's final decision on a motion to suppress because the application of constitutional standards of searches and seizures to uncontested facts is given less deference. *LoCicero, supra* at 500-501; *People v Beuschlein*, 245 Mich App 744, 748; 630 NW2d 921 (2001).

Both the United States and Michigan Constitutions guarantee the right against unreasonable searches and seizures. US Const, Am IV; Const 1963, art 1, § 11; *People v Kazmierczak*, 461 Mich 411, 417; 605 NW2d 667 (2000). Generally, a search or seizure conducted without probable cause is unreasonable. *People v Lewis*, 251 Mich App 58, 69; 649 NW2d 792 (2002). In *Terry v Ohio*, 392 US 1, 30-31; 88 S Ct 1868; 20 L Ed 2d 889 (1968), the Unites States Supreme Court determined that the Fourth Amendment permits police to stop and briefly detain a person based on "reasonable suspicion that criminal activity may be afoot." The *Terry* exception has been extended to incorporate "investigative stops" under a variety of circumstances for "specific law enforcement needs." *People v Nelson*, 443 Mich 626, 631; 505 NW2d 266 (1993). In *Nelson, supra* at 632, the Michigan Supreme Court summarized the appropriate test for the validity of an investigative stop as follows:

> In order for law enforcement officers to make a constitutionally proper investigative stop, they must satisfy the two-part test set forth in *United States v Cortez*, 449 US 411, 101 S Ct 690, 66 L Ed 2d 621 (1981). The totality of the circumstances as understood and interpreted by law enforcement officers, not legal scholars, must yield a particular suspicion that the individual being investigated has been, is, or is about to be engaged in criminal activity. That suspicion must be reasonable and articulable, and the authority and limitations

> associated with investigative stops apply to vehicles as well as people. [Citations omitted.]

"Reasonable suspicion entails something more than an inchoate or unparticularized suspicion or 'hunch,' but less than the level of suspicion required for probable cause." *People v Champion*, 452 Mich 92, 98; 549 NW2d 849 (1996), citing *United States v Sokolow*, 490 US 1; 109 S Ct 1581; 104 L Ed 2d 1 (1989). The reasonableness of a police officer's suspicion must be determined "case by case on the basis of the totality of all the facts and circumstances." *LoCicero, supra* at 501-502; *People v Jones*, 260 Mich App 424, 429; 678 NW2d 627 (2004).

Here, evidence was presented of numerous factors that the police officers used to determine the existence of a reasonable suspicion of criminal activity, including the following: 1) defendant was from the "source state" of California; 2) defendant had a criminal history of narcotics charges and convictions dating back to the 1960s; 3) defendant twice paid cash in advance for a week's stay at a hotel; 4) the vehicle defendant operated was registered to a third party; 5) defendant exhibited "surveillance conscious" driving; 6) defendant and Olivas gave inconsistent statements to police during a stop for a traffic violation on July 18, 2000; 7) a canine indicated the presence of a narcotics odor in the vehicle during the stop on July 18, 2000; 8) defendant spent the night at the residence of an individual known to have a criminal history in narcotics-related offenses; and 9) defendant was traveling southbound on I-75 on a route that exits the state. The trial court concluded that the combination of these factors was sufficient to warrant an investigatory stop to determine if, based on the officers' reasonable suspicion, criminal activity was afoot. The trial court also concluded that the length of the detention was appropriate under the circumstances, and that the scope of the police search was properly limited to locating drugs.

Defendant argues that the officers stopped defendant based on the anonymous tip, the fact that defendant was from a "source state," and defendant's criminal history. Defendant relies on *Alabama v White*, 496 US 325; 110 S Ct 2412; 110 L Ed 2d 301 (1990), to argue specifically that the anonymous tip in this case lacked the detail necessary to furnish reasonable suspicion for an investigatory stop. In *White*, *supra* at 327, police received an anonymous telephone tip that the defendant would be leaving a particular apartment in a particular car at a particular time to travel to a particular motel while in possession of cocaine in a brown attaché case. The officers observed the defendant leave that particular apartment complex, enter the vehicle described by the informant, and drive toward the indicated motel. The officers stopped the vehicle just before it reached the motel. The defendant gave the officers permission to search her car. The officers found marijuana in the attaché case and later found cocaine in her purse. *Id*. The United States Supreme Court found that generally an anonymous tip alone is insufficient to form the basis for reasonable suspicion necessary for a *Terry* stop. *Id*. at 329. Thus, when a tip is "completely lacking in indicia of reliability," either no police response is warranted, or further investigation is warranted before a *Terry* stop is permissible. *Id*., quoting *Adams v Williams*, 407 US 143, 147; 92 S Ct 1921; 32 L Ed 2d 612 (1972). The Court applied the totality of the circumstances test to determine whether reasonable suspicion existed to justify the stop. *Id*. at 330. Although not every detail of the tipster's information was verified by the police, the officers confirmed that the defendant left the indicated apartment complex at approximately the predicted time, entered the indicated vehicle, and proceeded in the most direct route to the indicated motel. *Id*. at 331. The

Court concluded that the anonymous tip, as confirmed by independent police work, furnished sufficient "indicia of reliability" to justify the investigative stop. *Id*. at 332.

According to the totality of the circumstances test, a tip given to the police, although independently insufficient to form a reasonable suspicion, when combined with additional factors, may form a reasonable suspicion sufficient to justify an investigatory stop. *People v Faucett*, 442 Mich 153, 168-169, 172; 499 NW2d 764 (1993). Here, the anonymous tip was a general tip that two persons were in the downriver area and were possibly involved in narcotics trafficking. Although the tip was less detailed than the tip in *White*, *supra*, it became the impetus for further investigation of the possibility of a crime. While defendant claims that the lack of specificity of the tip is fatal to any claim that the officers had reasonable suspicion, the reasonable suspicion was based on the totality of numerous factors, only one of which was the an anonymous tip. The generalized tip was sufficiently specific to draw the officers' attention to two individuals. Two weeks of further investigative activities, including surveillance and a stop for a traffic violation, provided additional evidence upon which to base a reasonable suspicion that criminal activity was afoot. While an individual action may not provide reasonable suspicion to justify the stop, the factors may be cumulatively considered to provide reasonable suspicion to justify the stop under the totality of the circumstances. *People v Oliver*, 464 Mich 184, 202; 627 NW2d 297 (2001). The lieutenant who acted as the CHIEF operational crew supervisor used his experience and training, including twenty-two years in law enforcement and 2 ½ years in a special narcotics task force, to find that the combination of these factors indicated defendant was involved in a narcotics transaction on July 19, 2000. We conclude that, when viewed in the aggregate, the anonymous tip, along with the additional factors, created a sufficient basis to form a reasonable suspicion that defendant was involved in criminal activity and justified an investigatory stop.

Defendant also asserts that the length of detention was unreasonable. A brief detention is permissible when based on a reasonable and articulable suspicion of criminal activity. *Burrell*, *supra* at 456-457. Once a valid stop occurs, the officers need only have a reasonable, articulable suspicion that defendant was involved, or was about to be involved, in criminal activity in order to further briefly detain him to confirm or deny the suspicions. *Lewis*, *supra* at 70-71; *People v Yeoman*, 218 Mich App 406, 411-412; 554 NW2d 577 (1996). Moreover, detention of a defendant to allow a narcotics canine to arrive at the scene for inspection is appropriate, provided reasonable suspicion exists and the investigative detention is limited in scope to the particular circumstances justifying the stop. *Lewis*, *supra* at 73-74.

The evidence in this case established that reasonable suspicion existed to stop the vehicle in which defendant was riding. Therefore, it was appropriate for the officers to briefly detain defendant to confirm or deny their suspicions. Defendant was detained while a canine searched the vehicle for the scent of narcotics. The total time, as stipulated by the parties, between when dispatch received the initial call that defendant's vehicle was stopped and received the second call that a canine found narcotics in the vehicle was a total of forty-four minutes. We conclude that the brief detention was supported by the officers' reasonable, articulable suspicion that criminal activity was afoot, and that the scope of the search was properly limited to evidence of a narcotics transaction. Accordingly, we hold that the trial court did not err in denying defendant's

motion to suppress.

Affirmed.

/s/ Kirsten Frank Kelly
/s/ Hilda R. Gage
/s/ Brian K. Zahra